

In re ) Fair Hearing No. 9348  
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Appeal of )

The petitioner appeals a denial of her request for a Supplemental Job Start loan from the State Office of Economic Opportunity.

1. The petitioner received a \$4,000 loan on June 7, 1988, through the State Economic Opportunity Office (S.E.O.O.) for her beverage and redemption sales business which she was to repay, along with 8 1/2% interest, at the rate of \$149.57 on the 1st of August and \$126.28 on the 1st of each month thereafter through July 1, 1991. The loan was secured by the petitioner's auto and business assets.

3. On August 3, 1988, the petitioner paid \$149.50 on her loan. On September 7, 1988, she paid \$126.28. On October 13, 1988, she paid \$126.28 by check but the check was returned

for insufficient funds. On October 13, 1988, the petitioner paid \$137.58 by check to cover the October 11th check and a bad check charge. That check was also returned for insufficient funds. The petitioner made no payment for November and paid \$126.28 on December 13. No payment was made again until March 4, 1989, when \$391.46 was paid. No further payments were received after that time. The petitioner stated that she did not realize how far behind she was because her monthly statements didn't reflect arrearages, however she also admitted that she was at least 90 days behind and it must, therefore, be found that she did realize she was behind in her payments.

4. In March of 1989, the petitioner's lease on her building was not renewed. She closed her business from April 1 to May 1, 1989, in order to move it. She did not tell S.E.O.O. that she would be closed down for one month although the petitioner did not realize the contract called for her to make such notification.

5. The job start coordinator attempted to speak to the petitioner several times about her arrearages beginning in August of 1988, but had little success reaching her. He was able to speak to her on at least one occasion and warned her that her delinquency was "not in her favor." The petitioner offered little by way of explanation for her lateness except that she needed the money to do renovations. No written delinquency notices were sent to the petitioner,

although she continued to receive monthly statements.

6. The petitioner filed a profit and loss statement on September 7, 1988, but filed no further statements. The petitioner said she relied on her accountant to file her statements and assumed he had done so. She is getting a new accountant because he has not even sent copies of the statements to her.

7. The services of a representative of S.E.O.O., whose duty it is to "assist" loan recipients, were refused by the petitioner who felt he interfered with the operation of her business.

8. In June of 1989, the petitioner decided to apply for an additional loan of \$5,000 for a new building and expansion of her business, offering her stock as collateral. She sent in a preview of her intentions.

9. The petitioner's preview was put before the regional Board. On June 28, 1989, a meeting was held at which the petitioner was informed that the Board was unhappy about her failure to make loan payments, her failure to file quarterly statements and her failure to report her business closure. At that time, the petitioner admitted her loan payments were 90 days behind and the Board tabled her request in order to review her loan payment record. The petitioner was told that her case would be considered again on July 19 and that she could present further evidence in support of her request. Apparently, the petitioner was asked for a cash flow statement and a listing of her

business assets at that time as well. However, no further hearing was held and on July 18 the Board decided via telephone to deny her request for an additional loan before receiving those documents.

10. On July 31, 1989, the petitioner was notified in writing that her request for additional loan funding was turned down because:

1. Your payments on the original loan have not been submitted in a timely fashion. You are currently several months in arrears while taking into account your past payments.

2. The Job State office did not receive monthly profit and loss statements as was agreed to when you signed the Loan Agreement form . . . Therefore, it could not be determined to what extent your business might have needed technical assistance or if you were reasonably profitable and needed no assistance. It must be noted that while the Job State office attempted to contact you by phone on several occasions, you did not return calls, even though messages were left. You did not call or write this office to describe why you were not sending the P & L Statements.

3. Neither the review board nor Job Start was advised that you had had a business interruption . . . This was first brought up by you at the Board meeting in June.

Given the above history, the board, in all good conscience could not grant more loan money at this time. You do have the right to appeal the decision of the Regional Advisory Board.

ORDER

The S.E.O.O.'s decision is upheld.

DISCUSSION

The State Economic Opportunity Office administers the Job Start program and contracts with the regional community action program which appoints an advisory board for the purposes of reviewing loan applications and giving advice.

3 V.S.A. § 3702. The statute provides that:

(b) Loans may be made to low-income persons upon application for the purpose of establishing or expanding a small business venture in the region. The term of the loans shall be determined by the regional board, but shall not be made in an amount in excess of \$2,500.00 to any single applicant, nor at a rate to exceed five percent, simple interest per annum, unless the contract with the State Economic Opportunity Office shall provide otherwise. A majority vote of the board members shall be necessary to approve a loan, which shall then be transmitted to the state director for final approval in accordance with policies set by the state advisory board.

3 V.S.A. § 3703.

S.E.O.O. has adopted "procedures" involving job start loans which require, among other things, that applications are reviewed by the Vermont Job Start Program Specialist under several criteria, including "credit worthiness" of the applicant. Vermont Job Start Loan Procedures, (II.3). If it is determined that that proposal does not have sufficient merit, the applicant shall be notified by letter stating the reasons for denial. If the Program Specialist determines that an application has sufficient merit the process shall be as follows:

1. The Job Start Program Specialist may contact the applicant for additional information about the business proposal, and prepare a loan proposal packet which is sent to one of the five Regional Advisory Boards:

Central Vermont Region  
Lamoille County  
Orange County  
Washington County

Champlain Valley  
Addison County  
Chittenden County  
Franklin County  
Grand Isle County

Northeast Region

Orleans County  
Caledonia County  
Essex County

Southeast Region

Windsor County  
Windham County

Southwest Region

Rutland County  
Bennington County

2. The Job Start Program Specialist sets a meeting date for the Vermont Job State Regional Advisory Board in the region wherein the applicant proposes to do business;
3. The applicant is notified of the meeting date and is asked to attend to present their proposal;
4. The Regional Advisory Board either approves or rejects the loan by a majority vote (in some instances, special conditions for receipt of a loan may be set by the board) and transmits the loan to the Director of SEOO for final approval or denial in accordance with guidelines set forth in these procedures;
5. If the loan is approved, the applicant is so notified and a date for closing is established by the State Economic Opportunity Office;
6. If the loan is denied, the applicant receives a letter stating the reasons for denial.

It is not clear in this case why this matter ever reached the Regional Advisory Board as it appears the Job Start Specialist had serious questions about the credit-worthiness of the applicant. However, it is clear from the Board's letter that the focus of the denial of the petitioner's loan application was not the soundness of her expansion proposal but her failure to honor the terms of her prior loan agreement. Given those grounds, the Board's decision to deny her application before seeing all her

business proposals cannot be found to be in error. It is unfortunate, however, that the Board could not have gone ahead and held a second meeting to explain this to the petitioner so she would not be left with the impression that she had been unfairly dealt with.

If the decision of the Board is to be upheld it must be because it had sufficient evidence to find that the petitioner was not "creditworthy". The Board felt there was evidence that the petitioner had failed with regard to three obligations: 1) to repay her loan as it became due, 2) to file quarterly profit and loss statements, and 3) to report a temporary business closure. It is fair to say that in order to find a breach of an obligation reflecting on her creditworthiness it must be found that the petitioner understood these obligations, realized that she was in breach, and failed to remedy the situation without good cause.

With regard to the filing of quarterly profit and loss statements, and her failure to report a temporary business closure, the above findings cannot be made. Although the evidence shows that the petitioner signed contracts promising to perform the above duties, the S.E.O.O. produced no evidence that the petitioner knew or should have known she was in breach of either agreement. With regard to the profit and loss statements, the petitioner thought her accountant had submitted them and apparently never received any written or other notification from S.E.O.O. that they

had not been received. With regard to her 1 month business closure due to relocation, the petitioner did not realize that such action would be considered a "departure from her business plan or a substantial change in the Debtor's business product or service." As she soon reopened the same business in a different locale, it could certainly be argued that any departure or change was minimal and not substantial. In any event, the S.E.O.O. has not shown how its loan was jeopardized by this temporary closing or how her credit worthiness was affected thereby.

With regard to the petitioner's loan repayments, however, it is a different story. The petitioner clearly knew how much her loan payments were and when she was to make them. While the S.E.O.O. could have and should have done a much better job of apprising her of the exact amount of her delinquencies in writing, it is nevertheless obvious that the petitioner knew she was substantially in arrears very soon after her loan was taken out. At the time of her new loan application, she knew for certain she was at least 90 days behind in her payments. At hearing, the petitioner was not able to offer any information which might come close to explaining or excusing the delinquencies. Therefore, with regard to the loan payments it must be concluded that the S.E.O.O. had good and adequate grounds for determining that the petitioner had not paid as promised and was substantially in arrears, for no known good cause, in her loan payments.



The petitioner's knowing and unexcused failure to pay on her loan must be found to go to the very heart of a determination on credit-worthiness. On that basis alone, the Board's decision was reasonable under S.E.O.O.'s procedures. It must be concluded, therefore, that as the Board's decision was founded on sufficient evidence and made in accordance with its own policies that it should be upheld. The petitioner should be apprised that the removal of her delinquencies and the formation of a habit of repaying her loan on a timely basis may go a long way toward rehabilitating her credit worthiness for any future applications she may wish to make.

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The Board would like to make the observation that S.E.O.O.'s clients and its own record-keeping may be better served if written notices of delinquencies and other contract breaches are sent promptly to loan recipients. Such notices serve both to inform a perhaps unaware recipient of a problem and also to document the S.E.O.O.'s own efforts in dealing with problems which may arise.

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